

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO: 1:22-cv-00012-WO-JEP

ABIGAIL JORDAN and BERTA
JORDAN, individually,

Plaintiff,

v.

CHATHAM COUNTY BOARD OF
EDUCATION; DAN BARNWELL; G.
DOE (a minor); M. DOE (a minor);
GYM TEACHER DOE A; GYM
TEACHER DOE B; DOES 1 through
20,

Defendants.

**CHATHAM COUNTY BOARD OF
EDUCATION’S MOTION TO
DISMISS AMENDED COMPLAINT**

Defendant Chatham County Board of Education (“Board”), by and through its attorneys, moves the Court pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss Plaintiffs’ claims in their Amended Complaint. In support of its motion, the Board respectfully shows the Court the following:

1. Plaintiffs’ claims against employees of the Chatham County Board of Education are duplicative of any claims Plaintiff asserts against the Chatham County Board of Education and should be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

2. Any state-law tort claims Plaintiffs may have against the Chatham County Board of Education should be dismissed under Rule 12(b)(1) and 12(b)(2) because the Board has not waived its governmental immunity for suits of this kind.

3. Plaintiff has failed to state claims against the Chatham County Board of Education upon which relief may be granted. As a result, Plaintiffs' claims under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as well as Plaintiff's negligent infliction of emotional distress claims, should be dismissed pursuant to Rule 12(b)(6).

4. Plaintiffs lack standing to bring claims for injunctive, declaratory, and equitable relief. Any such claims should therefore be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

5. Similarly, punitive damages may not be recovered against the Chatham County Board of Education as a matter of law. As a result, Plaintiffs' claims for punitive damages should also be dismissed pursuant to Rule 12(b)(1).

6. In support of its Motion to Dismiss Plaintiffs' Amended Complaint, the Board relies on Plaintiff's Amended Complaint and affidavits filed in support of its previous Motion to Dismiss, including [D.E. 17-2](#) and [D.E. 17-3](#).

Pursuant to Local Civil Rule 7.3(a), M.D.N.C., a Memorandum of Law in support of this motion is being submitted contemporaneously with the motion.

Based on the foregoing, the Board respectfully moves this Court to dismiss all claims described above with prejudice and to order such other relief as justice requires.

This the 19th day of December 2022.

Respectfully submitted,

/s/ Lindsay Vance Smith

THARRINGTON SMITH, L.L.P.

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*Attorney for Chatham County Board of
Education*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing **CHATHAM COUNTY BOARD OF EDUCATION'S MOTION TO DISMISS AMENDED COMPLAINT** was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such to the following:

Keith Altman
West 12 Mile Road, Suite 375
Farmington Hills, MI 48331
Email: keithaltman@kaltmanlaw.com
Attorney for Plaintiffs

This the 19th day of December 2022.

THARRINGTON SMITH, L.L.P.

/s/ Lindsay Vance Smith